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Supreme Court, U.S.
FILED
MAY 2 1987
JOSEPH F. SPANIOL, JR.
CLERK

No._____

In The

Supreme Court of the United States

October Term, 1986

CITY OF LAWTON, OKLAHOMA,
a municipal corporation,

Petitioner,

vs.

LEONARD CARL TURNER,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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April, 1987

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QUESTION PRESENTED

1. QUESTION: Whether evidence obtained via a search warrant held invalid and suppressed in a criminal action may be held to be property admitted in a related prior civil administrative proceeding.

LIST OF PARTIES

Parties to the action below were Leonard Carl Turner, and the City of Lawton, Oklahoma, a municipal corporation.

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a municipal corporation,

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Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The Petitioner, the City of Lawton, Oklahoma by and through its City Attorney, David M. Curtis, prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of the State of Oklahoma.

OPINION BELOW

The decision of the Supreme Court of the State of Oklahoma, for which this petition is sought, is yet to be reported. It is styled: LEONARD CARL TURNER vs. CITY OF LAWTON, OKLAHOMA, a municipal corporation, No. 61,339. It was rendered on July 22, 1986. The City of

Lawton petitioned for rehearing which was denied on March 10, 1987.

The decision of the Oklahoma Supreme Court is attached as Appendix A. The Oklahoma Court of Appeals' decision which was reversed by the Supreme Court's decision is attached as Appendix B. The Order denying the City's Petition for Rehearing is attached as Appendix C. The trial court judgment which was affirmed by the Supreme Court decision is attached as Appendix D.

JURISDICTIONAL STATEMENT

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(3).

RELEVANT CONSTITUTIONAL PROVISIONS

The Fourth Amendment to the United States Constitution provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Article 2, Section 30 of the Oklahoma Constitution provides:

> "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches or seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, describing as particularly as may be the place to be searched and the person or thing to be seized."

These two provisions are of such obvious similarity, that federal guidelines and constitutional purposes behind the implementation of the Fourth Amendment are applicable in this case.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Leonard Carl Turner was employed as a Fireman for the City of Lawton, Oklahoma. On September 16, 1982, pursuant to a search warrant issued by the District Court of Comanche County, Oklahoma, officers of the Lawton Police Department searched Mr. Turner's residence and found a box containing methamphetamine, a controlled substance under the laws of the State of Oklahoma. Possession of such a substance is a felony in Oklahoma.

Subsequent to the execution of the search warrant, Mr. Turner was taken into custody and charged in the District Court of Comanche County with a felony, Possession of a Controlled Substance.

On September 22, 1982, Mr. Turner was discharged for cause from his employment as a fireman with the City of Lawton. A timely notice of appeal of the employment termination was filed with the Lawton City Personnel Board, hearings were held on October 19, and November 16, 1982, and the Lawton City Personnel Board affirmed the termination decision.

On June 14, 1983, in the related criminal proceeding, the search warrant of September 16, 1982, was held invalid, and the evidence suppressed.

On June 20, 1983, this civil suit was commenced by Mr. Turner in the District Court of Comanche County, seeking to overturn the decision to terminate his employment. On October 17, 1983, the trial judge ruled that:

> "The only authority for entering the private residence of the Plaintiff was the bogus warrant; therefore, the Court holds such evidence to be incompetent and the dismissal improper."

The full text of the trial court's decision is at Appendix D.

On appeal, the Court of Appeals of the State of Oklahoma reversed the trial court, relying primarily on the rationale of United States v. Janis, 428 U.S. 433 (1976). That decision was rendered on February 26, 1985, and is attached in full at Appendix B.

The Supreme Court of Oklahoma reversed, affirmed the trial court, and rejected the Janis rationale. That decision was rendered on July 22, 1985, and is attached in full at Appendix A.

The City's Petition for Rehearing was denied on March 10, 1987. That Order is appended at Appendix C.

REASONS FOR GRANTING THE WRIT

The decision of the Supreme Court of Oklahoma is totally contrary to the rationale of United States v. Janis and the cases decided subsequently. Tirado v. Commissioner of Internal Revenue, 689 F.2d 307 (2nd Cir. 1982), cert. denied, 460 U.S. 1014 (1983).

Public policy interests in suppressing evidence for Fourth Amendment violations are not served by application of such rules in the civil arena.

The Fourth Amendment should not and does not reach that far.

CONCLUSION

Evidence sufficient for termination of employment should not otherwise be excluded because of a subsequently determined deficiency in a search warrant.

Respectfully submitted,

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APPENDICES

APPENDIX A: OPINION BELOW

Decision of the Supreme Court of the State of Oklahoma

filed July 22, 1986 (not yet published)

[NOTE: footnotes are set out as endnotes and follow the text of the opinion]

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

LEONARD CARL TURNER, Appellee,	)	
v.	)	No. 61,399
CITY OF LAWTON, OKLAHOMA, a municipal corporation, Appellant.	)	"FOR OFFICIAL PUBLICATION"

CERTIORARI TO THE COURT OF APPEALS, DIVISION NO.2

After illegally obtained evidence was taken from his home, the appellant-firefighter was suspended and subsequently discharged without a pre-termination hearing. After the evidence was presented in his post-termination hearing, the firefighter appealed the discharge to the district court seeking reinstatement, alleging that the exclusionary rule is applicable to civil as well as criminal proceedings and that his constitutional rights had been violated. The Honorable William M. Roberts ordered his reinstatement and the City of Lawton appealed. In a split decision, the Court of Appeals reversed and certiorari was granted. On certiorari, we find that because the affidavit was concededly facially defective, the search warrant was invalid, and that the exclusionary rule was properly applied under the Okla. Const. art. 2, §30.

CERTIORARI PREVIOUSLY GRANTED
OPINION OF THE COURT OF APPEALS WITHDRAWN
JUDGMENT OF THE TRIAL COURT AFFIRMED

Warren H. Crane, Esq.
Lawton, Oklahoma — For appellee,

Gerald S. Rakes, Esq.
Assistant City Attorney
Lawton, Oklahoma — For appellant.

KAUGER, J.

The sole question of law presented, which we must answer in the negative, is whether evidence, obtained via a search warrant held invalid and suppressed in a criminal action may be admitted in a related civil administrative proceeding. The validity of the search warrant is not an issue on appeal, thus the underlying facts are irrelevant to our analysis and disposition of the arguments raised by the parties. It is admitted by all of the parties that the search warrant was invalid; hence, the search was conducted as if there were no warrant at all.[1]

On October 27, 1983, after the court in the criminal case dismissed all charges against Leonard Carl Turner, appellee, he subsequently

filed an action for reinstatement as a fire-fighter for the City of Lawton in the district court of Comanche County, asserting that he had been fired based on incompetent evidence seized in violation of his constitutional rights.[2] The trial court agreed, finding Turner was terminated based on evidence obtained under a "bogus" warrant, and holding the evidence incompetent, and his dismissal improper. The City appealed, conceding the invalidity of the warrant and contending only that the exclusionary rule is inapplicable to civil proceedings. In a split decision, the Court of Appeals reversed the trial court, and certiorari was granted.

HISTORICAL ANALYSIS OF THE EXCLUSIONARY RULE

The one procedural safeguard which arose directly from events immediately preceding the revolutionary war was the protection against unreasonable search or seizure.[3] The writ of assistance, although seldom exercised in England, was being used by customs officers in the colonies to enter buildings to search for smuggled merchandise. The controversy over

these writs continued until the Revolutionary War -- the bill of particulars in the Declaration of Independence contained the complaint that the King had sent hither swarms of officers to harass our people.[4] Even after the United States Constitution was adopted, the citizens of the new country feared a recurrence of governmental violations of personal rights and liberties.[5]

When he spoke to the Oklahoma Constitutional Convention, the Honorable J. K. King of Newkirk, President pro tempore of the convention, said that the force and effect of any law is not written upon the printed page, but in the hearts and the intelligence and the conscience of the people. He noted that although the framers of the federal constitution did not believe a Bill of Rights to be necessary, the people refused to accept it without the assurance that such a bill would be incorporated,[6] and, that the Oklahoma Constitution contained provisions to guide officials and to inspire and protect its people. Thereafter, the Convention adopted art. 2, §30.[7] King's address to the Constitutional Convention echoed

James Madison's speech to the first Congress on June 8, 1789 in which Madison said:[8]

> "If (these rights) are incorporated into the Constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the Legislative or Executive; they will naturally be led to resist every encroachment upon rights expressly stipulated for in the Constitution by the declaration of rights.

THE EXCLUSIONARY RULE HAS BEEN ADOPTED BY THE UNITED STATES SUPREME COURT, THE OKLAHOMA SUPREME COURT, AND THE OKLAHOMA COURT OF CRIMINAL APPEALS

The thrust of the exclusionary rule is that evidence illegally obtained by government agents cannot be used against a person whose constitutional rights have been violated by an unreasonable search or seizure. The genesis of the rule can be traced to Weeks v. United States, 232 U.S. 283, 393, 398, 34 S.Ct. 341, 58 L.Ed. 652 (1914). In Weeks, the United States Supreme Court unanimously rejected the common law view that exclusion of illegally seized evidence constitutes an unjustified interference with the trial court's obligation to permit presentation of all reliable and probative evidence to the trier of fact -- and

that because the ends [sic] justifies the means, courts would not inquire into about how otherwise admissible evidence is gathered.

Subsequently, in Silverthorne Lumber Co. v. United States, 251 U.S. 385, 392, 40 S.Ct. 182, 54 L.Ed. 319 (1920), Justice Holmes, speaking for the Court, stated that, "The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court, but that it should not be used at all." The Oklahoma Supreme Court in Hess v. State, 84 Okla. 73, 202 P.310, 314-316 (1921) adopted the Silverthorne and Weeks rationale.[9]

In Gore v. State, 24 Okla. Crim. 394, 218 P.545, 547, 550 (1923) the Oklahoma Court of Criminal Appeals, acknowledging the OKlahoma Supreme Court decision in Hess, overruled the common law doctrine that the ends of justice permitted the use of evidence by whatever means obtained and refused to admit evidence acquired through an illegal search. The Court held that the use of evidence thus tainted, was not good law, nor even good morals, because the use of unlawful procedures to attain the goals of the

state was not calculated to inspire respect for the courts whose primary function is to enforce the law with fairness and impartiality. The Court found that judicial enforcement of the guaranty against unreasonable search or seizure was indispensable to the full enjoyment of personal security, personal liberty, and private property; and that the right to be secure in one's home and person was entitled to the same Constitutional protection as freedom of the press, the right to trial by jury, the writ of habeas corpus, and due process of law.

The federal exclusionary rule was not extended to the states under the due process clause until 1961, when the United States Supreme Court decided Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1864, 6 L.Ed.2d 1081 (1961). Nonetheless, by 1921, some forty years earlier, the Oklahoma Supreme Court in Hess had incorporated it as a part of the body of Oklahoma law, and the Court of Criminal Appeals had acknowledged it in Gore by 1923. The Oklahoma Court of Criminal Appeals, in Simmons v. State, 277 P.2d 196, 198 (Okla. Crim. 1954) adopted the Weeks reasoning and the Holmes-Silverthorne

language, and, applying them to the Okla. Const. art. 2, §30, held that the exclusion of evidence acquired by an unconstitutional search or seizure was not merely a rule of procedure, but rather a fundamental right under the Oklahoma Constitution[10] -- independent of either the Fourth or Fourteenth Amendments of the United States Constitution.

PURSUANT TO THE OKLA. CONST. art 2, §30, OKLAHOMA COURTS HAVE FOUND THE EXCLUSIONARY RULE TO BE A FUNDAMENTAL CONSTITUTIONAL RIGHT APPLICABLE TO CIVIL AND CRIMINAL ACTIONS

Even when a search or seizure is patently illegal, the controversial question -- whether its fruits should be excluded from evidence -- remains. The applicability of the exclusionary rule to civil proceedings has never been resolved completely by the United States Supreme Court.[11] However, the United States Supreme Court has held that the exclusionary rule is a judicially created remedy operating to safeguard Fourth Amendment rights through its deterrent effect, and that the right is separate from the personal constitutional rights of the party seeking to invoke the rule.[12]

State statutes for state constitutions which afford greater rights than the federal constitution must be determined by following state law. The state of Oklahoma in the exercise of its sovereign power may provide more expansive individual liberties than those conferred by the United States Constitution -- it is only when state law provides less protection that the question must be determined by federal law.[13] The Constitution of the State of Oklahoma contains independent sources of rights and liberties, which may, under some circumstances, offer more protection than the federal constitution. The Oklahoma Constitution does not merely project a mirror image of the federal constitution. The people of this state are governed by the Oklahoma Constitution, and when it grants a right or provides a principle of law or procedure beyond the protections supplied by the federal constitution, it speaks for every person as the supreme law and final authority for everything which is done in pursuance of its provisions.[14]

Although the United States Supreme Court addressed the issue of whether illegally seized

evidence could be used in a subsequent civil action, it did not resolve it completely in United States v. Janis, 428 U.S. 433, 96 S.Ct. 3021, 49 L.Ed.2d 1046 (1976). In Janis, a state officer notified the Internal Revenue Service (IRS) that Janis had been arrested for bookmaking activity. The IRS then assessed wagering excise taxes and levied against the money seized by the officer. The trial court found the police officer's affidavit defective, and granted the motion to quash the warrant. The court did not return the money seized and Janis claimed a refund. The Supreme Court allowed introduction of the evidence illegally seized by state officers to be used in a federal civil proceeding finding that the likelihood of deterring police misconduct by extending the exclusionary rule did not offset the substantial social costs of overturning an otherwise valid conviction.

The Janis rationale, however, is by its own terms applicable only to certain fact situations, namely those in which agents of different sovereigns are involved. The Court said:

> "[W]e conclude that exclusion from federal civil proceedings of evidence unlawfully seized by a state criminal enforcement officer has not been shown to have a sufficient likelihood of deterring the conduct of the state police so that it outweighs the societal costs imposed by the exclusion. This Court, therefore, is not justified in so extending the exclusionary rule." (Emphasis supplied)

Evidence seized by federal narcotics agents for use in a drug prosecution was not barred by the exclusionary rule from use in a civil tax proceeding in Tirado v. Commissioner, 689 F.2d 307, (2d Cir. 1982) cert den'd, 460 U.S. 1014, 103 S.Ct. 1256, 75 L.Ed.2d 484 (1983) because the evidence was not seized with the participation, collusion, or contemplation of use by agents responsible for the proceeding in which the evidence was presented. Janis and Tirado are factually and conceptually distinguishable from the present case. Here, we have a city law enforcement officer and a city civil proceeding; thus the deterrence value of applying the exclusionary rule is obvious. If on the other hand, the evidence can be used to discharge Turner from his job, even though the criminal charges were dismissed, there would still be a substantial incentive to the city's

police officers to engage in further unlawful searches especially when municipal employees are the targets thereof.

We find the logic of Hess v. State, 84 Okla. 73, 202 P. 310, 314-16 (1921) more carefully tailored than any available federal decisional law to deter the official misconduct which victimized Turner, and thus to be controlling precedent in this case.[15] Although Hess was a forfeiture case and belongs in the quasi-criminal area, many jurisdictions[16] considering this question have forbidden the introduction of the fruits of illegal searches in a host of derivative civil actions including replevin,[17] recovery on a fire insurance policy,[18] defamation,[19] wrongful death,[20] termination of tenancy;[21] and discharge proceedings of a civilian air force employee for unlawful possession of fire arms and for furnishing misleading educational qualifications.[22]

The Supreme Court of the State of Oklahoma is not required to follow Janis, or Tirado, because these cases are too restrictive for application under the standards of Oklahoma's

fundamental law -- the new version of the exclusionary rule is merely a federal rule of evidence. Even if these cases could be construed to announce neoteric federal constitutional dogma, this Court is unfettered in its enforcement of the Oklahoma exclusionary rule. The Supremacy Clause of the United States Constitution, Art. VI, §2, is pertinent only if state constitutions afford their citizens lesser rights and protections.[23] While the federal courts have vacillated in applying the exclusionary rule, the courts of this jurisdiction have been consistent.[24] An underlying reason for the slightly different approach to the rule taken by Oklahoma may be based on small, but significant differences between the language of the Fourth Amendment and art. 2, §30. The Oklahoma Constitutional prohibition is broader in scope than its federal counterpart, forbidding any unreasonable search or seizure and requiring that the place to be searched be described with greater particularity than does the federal constitution.[25] This

distinction between the United States Constitution and the Constitution of the State of Oklahoma is readily demonstrable.[26]

Article 2, §30 must be strictly construed, and unless it can clearly be shown that the officers making the search complied with the legal prerequisites necessary to constitute a lawful search, the evidence seized by an unreasonable search must be suppressed.[27] The absolute security granted by the Okla. Const. art. 2, §30 against unlawful search or seizure exists without reference to the guilt or innocence of the person whose property is searched, and without consideration of whether the proceeding is civil or criminal[28] in nature.

Based on the traditional concept of the sanctity of the home and peaceful enjoyment of its privacy,[29] the exclusionary rule receives its most rigid application when a dwelling house is involved in a search, Lord Coke said, "The house of every man is to him a fortress, as well for his defense against injury and violence as for his repose." When Parliament moved to abolish general unrestricted warrants,

General William Pitt lead the attack with the justly renowned remarks:

> "The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England may not enter; all his force dares not cross the threshold of the ruined tenement."

In short, a man's home is his castle.

The citizens of Oklahoma possess a double-barrelled source of protection which safeguards their homes from unauthorized and unwarranted intrusions[30] -- the Fourth Amendment and art. 2, §30. This dual safeguard flows directly from the United States Supreme Court's explicit acknowledgement [sic] of the right of state courts, as the final interpreters of state law to impose higher standards on searches and seizures than those required by the federal constitution, even if the state constitutional provision is similar to the Fourth Amendment.[31] Even if we were to find that appellee's Fourth Amendment rights had not been violated, which we could not do under the facts presented, our constitutional prohibition against unreasonable searches or seizures requires that the evidence

be suppressed in the termination hearing. One of mankind's most precious liberties is the right to earn a livelihood.[32] It would appear to be wholly at odds with our heritage to allow the admission of evidence illegally seized by government agents in discharge proceedings.[33]

The Okla. Const. art. 2, §30 constitutes a bona fide, separate, adequate, and independent grounds upon which we rest our finding[34] that the illegal search prohibition pertains equally to civil and criminal proceedings. Our Constitution does not say that the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches or seizures can be violated by government agents in civil actions, or that facially defective warrants may be issued if criminal sanctions are not invoked.

Courts organized and established for the purpose of enforcing the laws of the state cannot permit an order of termination to stand, after finding a violation of the law and a disregard for the constitutional protection guaranteed to every citizen of this state.[35]

Traditionally, Oklahomans have zealously guarded their right to privacy and their protection against unreasonable searches or seizures.[36] If the time has come for a more restrictive exclusionary rule, a constitutional amendment should serve as the people's vehicle for change.

This decision is not founded on a desire to protect a possible miscreant, but rather to insure that all citizens are enfolded within the embrace of protections which have remained inviolate since the framers of the Declaration of Independence sought relief from harrassment [sic] by swarms of the King's officers and since the Oklahoma Constitutional Convention recognized the self-evident truths of the time.[37] History bears out the continuing need for this safeguard -- one need only look to modern world history and today's headlines to appreciate the need for prohibitions against unwarranted or unreasonable search or seizure.

CERTIORARI GRANTED;
OPINION OF COURT OF APPEALS VACATED;
TRIAL COURT AFFIRMED

DOOLIN, V.C.J., LAVENDER, HARGRAVE, OPALA, J.J. concur. WILSON, J. concurring in judgment only. SIMMS, C.J., HODGES, SUMMERS, J.J. dissent.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

LEONARD CARL TURNER,	)	**FOR OFFICIAL PUBLICATION**
Appellee,	)	
v.	)	No. 61,399
CITY OF LAWTON, OKLAHOMA, a municipal corporation,	)	
Appellant.	)	

SIMMS, C.J.

I respectfully dissent.

I agree with the City of Lawton that the exclusionary rule does not apply to this administrative personnel proceeding.

Leonard Turner was dismissed from the Lawton Fire Department when amphetamine, a controlled substance, was found in his residence by police executing a search warrant.

He was charged with possession of cocaine, with intent to distribute. While the criminal charges were pending, Turner pursued an appeal of his dismissal to the Personnel Board and was given a full hearing. The City presented evidence of the amphetamine to justify his dismissal. The Board affirmed the termination of his employment.

Subsequently, in the criminal case, the trial court held the affidavit was insufficient. The search warrant was set aside, the evidence suppressed and the criminal charge dismissed.

It was then that Turner sought reinstatement from the district court and review of that administrative decision, contending it was based on an illegal search which violated his constitutional rights.

The trial court agreed with him and found his dismissal improper. The Court of Appeals, in what I believe to be a well reasoned opinion, reversed the trial court, 56 OBJ 535. The Court of Appeals adopted the rationale of the Second Circuit in Tirado v. Commission of Internal Revenue, 689 F.2d 307, (2nd Cir.1982), cert.denied, 460 U.S.1014(1983), wherein that court established guidelines for the application of the balance of interests tests fashioned by the Supreme Court in United States v. Calandra, 414 U.S. 338, 94 S.Ct. 613, 38 L.Ed 2d 561 (1974); and United States v. Janis, 428 U.S. 433, 96 S.Ct. 3021, 49 L.Ed 2d 1046 (1976).

That analysis first seeks to determine the motivation of the officers who seized the evidence and examine whether their interests are related to the civil proceeding. This approach best serves society by excluding reliable and relevant evidence only when necessary to protect the purposes of the Fourth Amendment.

Here there is no close relationship between the search by police and subsequent use of the evidence by the city and personnel board. Those proceedings are too remote from the primary interests served by officers seizing the drugs, and there is no evidence of collusion between police and city officials.

The primary purpose of the exclusionary rule is to deter future police misconduct. That purpose is clearly not served by excluding this evidence, and society's interest in maintaining levels of integrity and fitness of its public servants far outweighs any possible interest protected.

I do not believe that allowing the illegally seized evidence in the administrative proceeding violated either the Fourth Amendment or Article 2, Section 30, of Our Constitution.

I am authorized to state that Justices Hodges and Justice Summers join in this dissent.

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

LEONARD CARL TURNER, Appellee,	)	
v.	)	No. 61,399
CITY OF LAWTON, OKLAHOMA, a municipal corporation, Appellant.	)	**FOR OFFICIAL PUBLICATION**

ALMA WILSON, Justice, concurring in judgment only:

The exclusion of relevant evidence in a non-criminal proceeding, albeit by technical illegal seizure in a prior unrelated criminal investigation, is to my view justified only under such facts and circumstances as those disclosed from my examination of the record in this particular case.

I do not believe that relevant evidence ipso facto should be excluded from admission in any and all subsequent proceedings of a civil nature, simply because such has been excluded from an earlier criminal trial. I recede from what I perceive to be the wide-sweep of the majority opinion. I believe the competing interest of the right of the individual to privacy vis-a-vis the right of the public to

maintain levels of integrity and fitness of its public servants must be balanced as in Tirado v. Commission of Internal Revenue, (2d Cir. 1982), 689 F.2d 307, cert denied. 460 U.S. 1014 (1983), but that in this administrative proceeding a balancing requires exclusion to protect the purposes of the Fourth Amendment.

ENDNOTES TO APPENDIX A

[1] Jones v. State, 632 P.2d 1249-50 (Okla. Crim. 1981); Kinsey v. State, 602 P.2d 240, 242 (Okla. Crim. 1979).

[2] The United States Supreme Court has recently held, although after Turner's firing, that federal due process requires a pretermination hearing. Cleveland Bd. of Educ. v. Loudermill, ___ U.S. ___, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985). We have previously held, that art. 2, §7 of the Oklahoma Constitution may afford public employees even greater due process protection than the Fourteenth Amendment to the United States when property, interests are implicated. Umholtz v. City of Tulsa, 565 P.2d 15, 24 (Okla. 1977). However, for reasons set out in the text, we need not reach these issues to determine that the trial court's decision should be affirmed.

[3] See 1 LaFave, "Search and Seizure, A Treatise on the Fourth Amendment," pp. 3-4, §1.1 (1978); R. Davis, Federal Search and Seizure, Ch.1, pp. 4-5 (Charles C. Thomas Co. 1964).

[4] The unanimous Declaration of the thirteen United States of America recounted a long train of abuses and usurpations which resulted in depotism [sic]. One of the repeated injuries submitted as proof to a candid world was that the King had "sent hither swarms of Officers to harass our People, and eat out their substance."

[5] See LaFave, Note 3, supra.

[6] A. Ellis, A History of the Constitutional Convention of the State of Oklahoma, pp. 62, 76, 79 (Economy Printing Co. 1923). Mr. Ellis was second vice-president of the Constitutional Convention and Speaker Pro Tempore of the First State Legislature of the State of Oklahoma. He wrote to "give to the word a true history of the Constitutional Convention of the State of Oklahoma, that those who follow after us in the future years may know under what circumstances the constitution was written and by what character of men that instrument was framed."

[7] The Okla. Const. art. 2, §30 states:

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches or seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, describing as particularly as may be the place to be searched and the person or thing to be seized."

[8] 1 Annals of Cong. 439 (1789).

[9] The Court in Hess v. State, 84 Okla. 73, 202 P.310, 314-16 (1921) also cited another state court's decision at length. In Youman v. Commonwealth, 189 Ky. 152, 224 S.W. 860, 866, 13 A.L.R. 1303, 1313 (1920) the Kentucky Supreme Court said:

"On these facts the question presented is: Will courts, established to administer justice and enforce the laws of the state, receive, over the objection of the accused, evidence offered by the prosecution that was admittedly obtained by a public officer in a deliberate disregard of law for the purpose of securing the conviction of an alleged offender? In other words, will courts authorize and encourage public officers to violate the law, and close their eyes to methods that must inevitably bring the law into disrepute, in order that an accused may be found guilty: Will a high court of the state say, in effect, to one of its officers, that the Constitution of the state prohibits a search of the premises of a person without a search warrant, but if you can obtain evidence against the accused by so doing you may go to this premises, break open the doors of his house, and search it in his absence, or over his protest, if present, and this court will permit the evidence so secured to go to the jury to secure his conviction?

> It seems to us that a practice like this would do infinitely more harm than good in the administration of justice; that it would surely create in the minds of the people the belief that courts had no respect for the Constitution or laws, when respect interfered with the ends desired to be accomplished. We cannot give our approval to a practice like this. It is much better that a guilty individual should escape punishment than that a court of justice should put aside a vital fundamental principle of the law in order to secure his conviction. In the exercise of their great powers, courts have no higher duty to perform those involving the protection of the citizen in the civil rights guaranteed to him by the Constitution, and if at any time the protection of these rights should delay, or even defeat, the ends of justice in the particular case, it is better for the public good that this should happen, than that a great constitutional mandate should be nullified."

[10] See also Michaud v. State, 505 P.2d 1399, 1402 (Okla. Crim. 1973).

[11] Immigration and Naturalization Service v. Lopez-Mendoza, ___ U.S. ___, 104 S.Ct. 3479, 82 L.Ed.2d 778 (1984. Andreoli, "Admissibility of Illegally Seized Evidence in Subsequent Civil Proceedings: Focusing on Motive to Determine Deterrence," 51 Fordham L.Rev. 1019, 1023 (1983); Levin, "Constitutional Exclusion of Evidence in Civil Litigation," 55 Va. L.Rev. 1484 (1969); see also Dix, "Exclusionary Rule Issues As Matters of State Law," 11 Am J. Crim. Law 109, 119 (1983).

[12] New Jersey v. T.L.O., ___ U.S. ___, 105 S.Ct. 733, 83 L.Ed.2d 720, 731 (1985); Illinois v. Gates, 462 U.S. 213, 218, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983); reh. den. 463 U.S. 1237, 104 S.Ct. 33, 77 L.Ed.2d 1453 (1983); United States v. Calandra, 414 U.S. 338, 347, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974).

[13] State courts using the regulatory, judicial integrity, and personal rights approaches have found in their own constitutions broad protections for their citizens against illegal searches or seizures. See State v. Anderson, 286 Ark. 58, 688 S.W.2d 947, 979 (1985); People v. Bigelow, 66 N.Y.S. 2d 417, 488 N.E.2d 451 (1985); Stringer v. State, 37 Crim. L. 2045 (1985). See also South Dakota v. Neville, 459 U.S. 553, 565, 103 S.Ct. 916, 74 L.Ed.2d 748 (1983); Pruneyard Shopping Center v. Rogins, 447 U.S. 74, 81, 100 S.Ct. 2035, 64 L.Ed.2d 741 (1980); Pauley v. Kelly, 255 S.E.2d 859, 864 (W. Va. 1979); Dean v. Crisp, 536 P.2d 961, 963 (Okla. Cr. 1975); Bailey v. City of Tulsa, 491 P.2d 316, 318 (Okla. Crim. 1971).

See also Pollock, "State Constitutions as Separates [sic] Sources of Fundamental Rights", 35 Rutgers L.Rev. 707, 718-19 (1983); Note, "Developments in the Law: The Interpretation of State Constitutional Rights," 95 Harv. L.Rev. 1324, 1364 (1982). Linde, "E. Plurbis - Constitutional Theory and State Courts," 18 Ga. L.Rev. 165, 179 (1984); Kohane, "The Exclusionary Rule: Alternate Theories of Exclusion As Basis for State Court Activism", Annual Survey of American Law, 95 (1984).

[14] In Re McNaught, 1 Okla. Crim. 528, 99 P.241, 254 (1909).

[15] See notes 9 and 35 for controlling language in Hess.

[16] See Annot., "Admissibility, In Civil Case, of Evidence Obtained By Unlawful Search and Seizure," 5 A.L.R.3d 670 (1966).

[17] Reyes v. Rosetti, 47 Misc.2d 517, 262 N.Y.S.2d 845, 850 (1965).

[18] Kassner v. Fremont Mutual Ins. Co., 47 Mich. App. 264, 209 N.W.2d 490, 492 (1973).

[19] Selby v. Savard, 134 Ariz. 222, 655 P.2d 342, 347 (1982).

[20] Gilbert v. Leach, 62 Mich. App. 722, 233 N.W.2d 840, 842 91975).

[21] Tejdada v. Christian, 71 App. Div.2d 527, 422 N.Y.S.2d 957, 960 (1979).

[22] Powell v. Zuckert, 366 F.2d, 634, 639 (D.C. Cir. 1966).

[23] See Stringer v. State, note 13, infra; Michaud v. State, see note 10, supra; and note 13, supra for a fuller citation of authorities; Simmons v. State, 277 P.2d 196, 198 (Okla. Crim. 1954).

[24] See Hess v. State, note 9, supra; Michaud v. State, note 10, supra.

[25] King's speech to the Constitutional Convention embodies the reasons for significant difference in the Oklahoma Constitution. He said..."While we are told by some able judges that nothing should be put into the Constitution but what time and experience has been demonstrated to be true,...and while that is no doubt correct..., it is nevertheless true that there are self-evident truths in this day as there were in 1776." See A. Ellis, A History of the Constitutional Convention of the State of Oklahoma, pp. 62 (Economy Printing Co. 1923).

[26] The Fourth Amendment of the United States Const. provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

See note 7, supra, for comparisions [sic]. The Oklahoma statutes concerning search and seizure, 22 O.S. 1981 §§1221 et seq., clearly track the Oklahoma Constitution. The intent f the framers of the constitution to protect against unreasonable search or seizure is exemplified by sanctions provided by 22 O.S. 1981 §1239 which has remained unchanged since 1910.

It states: "A person who maliciously and without probable cause procures a search warrant to be issued and executed is guilty of a misdemeanor".

27 Crim v. State, 78 Okla. Crim. 153, 145 P.2d 444-45 (1944).

28 Gore v. State, 24 Okla. Crim. 394, 218 P. 545, 550-51 (1923). Castleberry v. State, 678 P.2d 720, 722 (Okla. Crim. 1984). See Ashbrook v. State, 92 Okla. 287-88, 219 P. 347, 349 (1923); and Annot., "Admissibility of evidence obtained by illegal search and seizure", 24 A.L.R. 1408, 1417 (1923). See also, Annot. "Admissibility, In Criminal Case, of Evidence Obtained by Search by Private Individual," 36 A.L.R. 3d 553 (1971).

29 California v. Carney, ___U.S.___, 105 S.Ct. 2066, 85 L.Ed.2d 406, 412 (1985); Davis and LaFave, note 3, supra.

30 Walinski and Tucker, "Expectations of Privacy: Fourth Amendment Legitimacy Through State Law," 16 Har. Civ. Rights Civ. Lib. L.Rev. 1, 4 (1981).

31 Cooper v. California, 386 U.S. 58, 62, 87 S.Ct. 788, 791, 17 L.Ed.2d 730, 734 (1967); See also State v. Von Bulow, 475 A.2d 995, 1019 (R.I. 1984) cert. den'd., ___U.S.___, 105 S.Ct. 233, 83 L.Ed.2d 162 (1984).

32 Douglas, J. concurring, Peters v. Hooby, 349 U.S. 331, 352, 75 S.Ct. 790, 800, 99 L.Ed. 1129, 1143 (1955).

33 Powell v. Zuckert, 366 F.2d 634, 639 (D.C. Cir. 1966).

34 Michigan v. Long, 463 U.S. 1032, 1041, 103 S.Ct. 3469, 77 L.Ed.2d 1201, 1214 (1983); New Jersey v. Haskell, 100 N.J. 409, 495 A.2d 1341, 1347 (1985).

35 In Hess v. State, 84 Okla. 73, 202 P. 310, 315-16 (1921), the unanimous Court said:

"The function of the courts of this country is to enforce a government of laws, and not a government of men. The final arbiter in all cases presented to appellate courts is the substantive law as controlled, limited, and regulated by the written law (meaning by the written law, the federal and state Constitutions, and the statute law enacted in accordance with the Constitutions). When an appellate court abandons the law as thus defined, it puts its ear to the ground to determine what is popular and what will or will not please the popular will. Such a court is then treading near a precipice that may engulf this government in anarchy. Such a court has broken with the law and the accepted wisdom of the ages, and is accepting in lieu thereof the rule of the popular will, and this is only a euphonious name for mob law and means nothing else but mob law in its final analysis. Between these two positions there can be no halting of the ways if we are to save our government from confusion and ultimate anarchy."

[36] Oklahoma did not recognize the automobile exception to the exclusionary rule until 1974 in Hughes v. State, 522 P.2d 1331, 1334 (Okla. Crim. 1974).

[37] See notes 4, 6, 25, supra.

APPENDIX B: OPINION BELOW

Decision of the Oklahoma Court of Appeals

filed February 26,1985

RELEASED FOR PUBLICATION BY ORDER OF
THE COURT OF APPEALS

IN THE COURT OF APPEALS, DIVISION 2

STATE OF OKLAHOMA

LEONARD CARL TURNER, Appellee,	)	
v.	)	No. 61,399
CITY OF LAWTON, OKLAHOMA, a municipal corporation, Appellant.	)	FOR PUBLICATION

APPEAL FROM THE DISTRICT COURT OF
COMANCHE COUNTY, OKLAHOMA

Honorable William M. Roberts,
Trial Judge

City sought to terminate fireman's employment after learning of evidence of his possession of illegal drugs. The evidence was later

suppressed in criminal proceedings. City appeals from a decision of the trial court determining that the evidence which was seized illegally in criminal proceedings was inadmissible in termination proceedings brought by City.

REVERSED

Warren H. Crane
Lawton, Oklahoma — For Appellee

Gerald S. Rakes
Assistant City Attorney
Lawton, Oklahoma — For Appellant

MEANS, J.

City appeals from the trial court's finding that evidence illegally obtained by police in criminal proceedings was inadmissible in administrative proceedings to terminate fireman's employment. The trial court determined that City's use of evidence obtained under an invalid search warrant to terminate Turner's employment as a fireman had violated Turner's constitutional rights, Having reviewed the record and applicable law, we reverse.

Leonard Carl Turner was employed as a fireman for the City of Lawton. On September 16, 1982, Turner was charged with possession of

cocaine with intent to distribute. The evidence upon which this charge was founded was obtained based on a defective search warrant. This violation of Turner's Fourth Amendment rights led to a suppression of the evidence in the criminal proceedings on June 14, 193.

When the city manager learned of Turner's alleged criminal act, Turner was dismissed from his duties as a fireman on September 22, 1982. Turner appealed his dismissal to the City personnel board and was given the appropriate hearing. At the hearing Turner was represented by counsel and was given the opportunity to cross-examine witnesses and present testimony. After hearing the evidence, the personnel board affirmed the city manager's decision to terminate Turner's employment.

After dismissal of the criminal charges Turner brought this action against the City. He asserted that he had been discharged based on evidence which had been seized in violation of his constitutional rights. He contended that the exclusionary rule which had barred the use of the evidence in his criminal trial would also effectively bar the use of that same

evidence in civil proceedings. The trial court agreed.

The City has appealed, asserting that the exclusionary rule does not apply to civil proceedings -- that evidence seized in violation of a criminal defendant's constitutional rights is nevertheless admissible in civil actions. City further asserts that it complied with all necessary procedural aspects in terminating Turner's employment.

For purposes of this appeal we will accept the lower court's determination that the evidence of Turner's alleged criminal conduct was obtained through an illegal search. We will also accept the conclusion that the exclusionary rule would prohibit the use of this evidence in criminal proceedings brought by the state against Turner. Mapp v. Ohio, 367 U.S. 643 (1961). However, it does not necessarily follow that illegally seized evidence which is determined to be inadmissible in criminal proceedings must be excluded from all other proceedings. United States v. Janis, 428 U.S. 433 (1976); United States v. Calandra, 414 U.S. 338 (1974).

In Oklahoma, the exclusionary rule clearly applies to state criminal proceedings through application of the state constitution. Gore v. State, 24 Okla. Crim. 394, 218 P. 545 (1923). Furthermore, the Oklahoma Supreme Court has extended the rule to cases involving a forfeiture of a defendant's property involved in criminal activities. See Dade v. State, 188 Okla. 677, 112 P.2d 1102 (1941). Because forfeiture is clearly a penalty for transgressing the criminal laws, exclusion of the illegally seized evidence is thought to obtain the same deterrent effect as exclusion in a criminal proceeding. One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693, 700-02 (1965). However, the question of whether evidence which has been seized in violation of a defendant's constitutional rights may be used in civil proceedings has never been reached by the courts of this state. Thus we are faced with a case of first impression.

In order to determine the exclusionary rule's applicability to civil proceedings we must analyze the appropriate constitutional

provisions as well as relevant case law interpreting the rule in light of the policies surrounding its creation. We start with the proposition that the seizure of evidence in violation of the Fourth Amendment does not always preclude use of the evidence at a civil trial. Indeed, whether the exclusionary rule may ever bar the introduction of evidence in a civil trial is currently uncertain.[1] "In the complex and turbulent history of the rule, the Court never has applied it to exclude evidence from a civil proceeding, federal or state." United States v. Janis, 428 U.S. at 447 (footnote omitted).

Our analysis begins with a comparison of the constitutional provisions upon which the rule is founded. The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

These rights are echoed in article 2, section 30, of the Oklahoma Constitution which states:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches or seizures shall not be violated; and no warrant shall issue but upon probable cause supported by oath or affirmation, describing as particularly as may be the place to be searched and the person or thing to be seized.

The obvious similarity in the two provisions, as well as a lack of mandatory authority in our own jurisdiction, leads us to federal guidelines for an interpretation of the rule in light of the constitutional purposes behind its creation and implementation.

In 1914, in Weeks v. United States, 232 U.S. 383 (1914), the Supreme Court adopted the exclusionary rule as a means of enforcing the Fourth Amendment guarantee against unreasonable searches and seizures. As stated earlier, the rule was applied in Oklahoma in both criminal and forfeiture proceedings in 1923. Gore v. State, 24 Okla. Crim. 394, 218 P. 545 (1923); Ashbrook v. State, 92 Okla. 287, 219 P. 347 (1923). Although Weeks dealt with the rule's applicability solely in federal criminal proceedings, in Mapp v. Ohio, 367 U.S. 643 (1961), the rule was extended to state criminal proceedings.

The exclusionary rule was once premised on the principles of personal rights and judicial integrity. Under the personal right theory, the goal of the exclusionary rule was the vindication of a personal right secured by the Constitution. See Dodge v. United States, 272 U.S. 530, 532 (1926). With the advent in most states of tort actions which may be brought against the officials who violate the injured party's Fourth Amendment rights, this rationale has declined. Furthermore, an action founded in tort may prove a more effective deterrent to political and administrative violations of the Fourth Amendment than applications of the exclusionary rule. See, e.g., Jonas v. City of Atlanta, 647 F.2d 580 (5th Cir. 1981); State Forester v. Umpqua River Navigation Co., 258 Or. 10, 478 P.2d 631 (1970), cert. denied, 404 U.S. 826 (1971).

The judicial integrity theory derives from a refusal on the part of the judiciary to become an accomplice to a constitutional violation through the admission of illegally seized evidence. See Terry v. Ohio, 392 U.S. 1, 12-13

(1968). This theory has likewise been substantially discounted. The Supreme Court has suggested that the idea of judicial integrity in the context of the exclusionary rule has been merged in the deterrence rationale and has no independent validity. Janis, 428 U.S. at 458-59 n. 35. "While courts, of course, must ever be concerned with preserving the integrity of the judicial process, this concern has limited force as a justification for the exclusion of highly probative evidence." Stone v. Powell, 428 U.S. 465, 485 (1976) (footnote omitted).

Clearly, the major premise for the rule is the deterrence rationale. The deterrence rationale is based on the principle that the exclusion of illegally seized evidence will deter future police misconduct. The Supreme Court has made it clear that this rationale is the primary, if not the sole, purpose for the rule. "[T]he ruptured privacy of the victims' homes and effects cannot be restored. Reparation comes too late." Linkletter v. Walker, 381 U.S. 618, 637 91965). "The rule is calculated to prevent, not to repair. Its purpose

is to deter--to compel respect for the constitutional guaranty in the only effectively available way--by removing the incentive to disregard it." Elkins v. United States, 364 U.S. 206, 217 (1960). The Calandra Court stated that "the rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved." 414 U.S. at 348 (footnote omitted). The Court stated that the "prime purpose" of the rule "is to deter future unlawful police conduct." Id at 347. The Calandra Court treated the rule as merely a judicially created tool for enforcement of the Fourth Amendment, not a right in itself. Id. at 348.

In United States v. Janis, 428 U.S. 433 (1976), the Court again pronounced that the primary purpose of the rule was to deter police conduct. The Janis Court ruled that evidence unlawfully seized by local police officers investigating local wagering offenses was not barred from use in a subsequent civil tax proceeding. In refusing to extend the rule, the

Court stated: "Clearly, the enforcement of admittedly valid laws would be hampered by so extending the exclusionary rule, and, as is nearly always the case with the rule, concededly relevant and reliable evidence would be rendered unavailable." Id. at 447 (footnote omitted). The Court used a balancing test to determine whether the marginal deterrence provided by forbidding a different branch of government from using the evidence outweighed the cost to society of extending the rule. Concluding that it did not, the Court stated that "exclusion from federal civil proceedings of evidence unlawfully seized by a state criminal enforcement officer has not been shown to have a sufficient likelihood of deterring the conduct of the state police so that it outweighs the societal costs imposed by the exclusion." Id. at 454.

Lower courts interpreting Janis have taken a variety of approaches concerning both government and private litigation.[2] Some courts, in applying the balance of interest test, determine the applicability of the rule by characterizing the proceeding as "quasi-criminal" in

nature.[3] Other courts make a distinction between intersovereign and intrasovereign use of the rule.[4] Still other courts apply the balance of interest test on a case by case basis.[5]

After careful analysis of the various approaches utilized to determine the applicability of the rule to subsequent civil proceedings, we are led to adopt the approach set out by the Second Circuit in Tirado v. Commissioner of Internal Revenus, 689 F.2d 307 (2d Cir. 1982), cert. denied, 460 U.S. 1014 (1983). The Tirado court established guidelines to use in the application of the balance of interest test set out in Calandra and Janis.

The Tirado court was faced with the question of whether evidence allegedly seized unlawfully by federal narcotics agents for use in a narcotics prosecution was barred by the exclusionary rule in subsequent federal civil tax proceedings. The court began its analysis with an inquiry into the motivation of the officers who seized this evidence. The court stated that this inquiry was "the fundamental issue in

translating the idea of deterrence into practical decisions, for deterrence means modifying individual behavior." Id. at 301. The court found that the evidence was not seized with participation or collusion of, or in contemplation of use by the tax officials who sought to use the evidence in civil proceedings. The court reasoned, "If it is not likely to occur to potential wrongdoers as they seize the challenged evidence to care about its use for the particular purpose later in issue, then removing the possibility of that use is unlikely to deter them from unlawful conduct." Id. at 310-11. The court then set down the following two part test in order to balance the deterrent effects of exclusion and the benefit to society:

> [I]n order to decide whether application of the exclusionary sanction is likely to have a significant deterrent effect, the key question is whether the particular challenged use of the evidence is one that the seizing officials were likely to have had an interest in at the time -- whether it was within their predictable contemplation and, if so, whether it was likely to have motivated them. And if law enforcement officers are already deterred from Fourth Amendment violations by a prohibition against using illegally seized evidence to secure convictions for the offenses they are investigating, the

> further question is whether some significant incremental deterrence in achieved by prohibiting use of the evidence for additional purposes.

Id. at 311.

The Tirado analysis seeks to determine whether the official responsibilities and personal interests of the seizing officer are at all related to the subsequent civil proceedings. Such an inquiry reveals whether use of the illegal evidence in a civil proceeding provided an incentive for the illegal search. If so, exclusion of the evidence achieves the deterrent purposes of the exclusionary rule. By exploring the motives of the seizing official, this approach best serves the interests of society by excluding relevant evidence only when necessary to protect the purposes of the Fourth Amendment.

This approach is sounder than those adopted by some courts that would either presume in favor of deterrence whenever a search and subsequent proceeding are initiated by agents of the same sovereign, or presume against it whenever the subsequent proceeding is civil.

It avoids the possibility of either underestimating the deterrent effect or overemphasizing the injury to society. It is far more equitable in its recognition that effective deterrence of unlawful searches may exist beyond the criminal or quasi-criminal context. Indeed, more than one governmental entity frequently benefits from evidence obtained in violation of the Fourth Amendment. This approach focuses on the relationship of seizing officials to the proceeding in which the illegal evidence is sought to be used. Examining the official's motives in light of the deterrence rationale behind the rule facilitates the court's balancing of the marginal deterrence to police conduct weighed against the benefit to society. By focusing on the realities of current law enforcement, this approach furthers the deterrent purpose of the exclusionary rule by excluding evidence in appropriate circumstances.

In adopting the above analysis, we find that application of the exclusionary rule to the civil proceedings in the instant case is far outweighed by the interests of society in

having the evidence presented. The deterrent purpose of the exclusionary rule would not have been served by suppressing in the personnel proceedings the evidence seized that formed the basis of Turner's discharge. As in Janis, it is not reasonable to suppose that a rule barring use of the evidence in personnel hearings would have materially influenced the police in their decision whether to make the particular search. Obviously, whether Turner remained in his job as a fireman was not the official objective of the search. Nor would police normally be expected to have a general motivating interest in assisting the City in determining hiring and firing of employees.

There is no close relationship between the illegal search by the police and the subsequent use of the evidence obtained in that search by the City's personnel board. Personnel termination proceedings are too remote from the primary interests of the police officers who made the seizure of the drugs in Turner's home. Furthermore, we find no evidence of collusion

between the police who seized the illegal substance and the city officials who terminated Turner's employment as a fireman.

After a review of the facts in the instant case and the authority cited above, it is clear that the deterrent effect upon police officers contemplated by the exclusionary rule is outweighed by the benefit to society in maintaining the integrity and fitness of those individuals who protect citizens as firefighters. Possession and possible use of illegal drugs is clearly related to the fitness to perform an important and vital job. The evidence was properly admissible in the termination hearings. The trial court's decision is reversed and remanded for further proceedings not inconsistent with this opinion.

BACON, J., specially concurs, and REIF, P.J., dissents.

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[1] Compare Immigration and Naturalization Service v. Lopez-Mendoza, ___ U.S. ___, 104 S.Ct. 3479 (1984) (exclusionary rule does not apply in civil deportation proceedings); Donavan v. Federal Clearing Die Casting Co., 695 F.2d 1020, 1022-25 (7th Cir. 1982) (OSHA enforcement proceeding; evidence admissible); Wong Chung Che v. Immigration & Naturalization Service, 565 F.2d 166, 169 (1st Cir. 1977)(deportation hearing; evidence inadmissible); Board of

Selectmen v. Municipal Court, 373 Mass. 783, 369 N.E.2d 1145 (1977) (exclusionary rule applies in proceedings to discharge public employee.).

[2] See, e.g., Geller, Enforcing the Fourth Amendment: The Exclusionary Rule and Its Alternatives, 1975 Wash. U.L.Q. 621, 640-52; Comment, Admissibility of Illegally Seized Evidence in Subsequent Civil Proceedings: Focusing on Motive to Determine Deterrence, 51 Fordham L. Rev. 1019 (1983).

[3] State Forester v. Umpqua River Navigation Co., 258 Or. 10, 478 P.2d 631 (1970), cert. denied, 404 U.S. 826 (1971) (refused to extend rule where proceeding was neither criminal nor quasi-criminal); Board of License Comm'rs v. Pastore, 433 A.2d 161 (R.I. 1983), cert. dismissed, ___U.S.___, 105 S. Ct. 685 (1984) (forfeiture of liquor license; extended the rule).

[4] Knoll Assocs. v. FTC, 397 F.2d 530, 533-37 (7th Cir. 1968) (documents seized for purposes of FTC investigation excluded from resulting hearing); Vander Linden v. United States, 502 F. Supp. 693, 697 (S.D. Iowa 1980) (search and subsequent proceeding initiated by officers of same agency; evidence excluded).

[5] Jonas v. Atlanta, 647 F.2d 580, 587 (5th Cir. 1981) (societal interest in obtaining accurate factual findings outweighs deterrence).

BACON, J., specially concurring

I concur in the majority opinion. As best I can understand the appellee's position, he suggests that the exclusionary rule which was derived from Okla. Const. art. 2, § 30, (or the Fourth Amendment of the United States Constitution for that matter should bar "illegally"

obtained evidence from any conceivable use. I do not believe such to be the law. United States v. Leon, ___U.S. ___, 104 S. Ct. 3405 (1984); United States v. Janis, 428 U.S. 433 (1976).

In Leon, the Supreme Court of the United States said, "Even defendants with standing to challenge the introduction in their criminal trials of unlawfully obtained evidence cannot prevent every conceivable use of such evidence." ___U.S. at ___, 104 S. Ct. at 3414.

In applying article 2, section 30 of the Oklahoma Constitution in the present case, the appellee concerns himself solely with the constitutional rights of an individual to the extent that society has not one single right.

In applying article 2, section 30 of the Oklahoma Constitution in the present case, the appellee concerns himself solely with the constitutional rights of an individual to the extent that society has not one single right.

I cannot believe the writers of this section intended such an interpretation. I say this

for obvious reasons. Suppose a public employee, such as a school teacher, was found to have a room full of cocaine in his or her home. Suppose the search warrant for such cocaine was invalid for some technical reason. In a criminal case the evidence would probably be inadmissible. I find it difficult to do as the appellee in the present case suggests. That is, I find it difficult to hold that the school board could not use the evidence of a room full of cocaine to fire the teacher. Surely children, parents, and society have some rights when a court interprets article 2, section 30 under a given set of facts.

I would reverse the trial court and rule that the City of Lawton and its citizens have some rights, including the right to use the evidence in question to discharge employees.

REIF, P.J., dissenting

I respectfully dissent. I do so not because of reservations or disagreement with the logic or scholarship of the majority opinion, but rather for a difference in analysis. Due

process, the protection of Okla. Const. art. 2, § 30, and Oklahoma authority construing it, dictate affirmance of the trial court. The majority overlooks certain important aspects of the context in which this question arises. While I do not question the majority's statement of the facts, I believe that restatement and review is critical to the rationale and result of this dissent.

Turner was suspended and later dismissed. This action was based upon the discovery of controlled drugs in his residence by Lawton police during execution of a search warrant. He was also charged with unlawful possession of controlled drugs. During the pendency of the criminal prosecution Turner appealed his firing to the City Personnel Board. The City sought to justify his dismissal before the Board by the testimony of the officers who obtained and served the search warrant. In particular, the City presented evidence relating to the discovery of a white powder, a field test of the substance by the officers, and a chemical analysis which revealed it was amphetamine, a controlled drug.

Turner objected to this evidence and moved for the Board not to consider it. He claimed that the affidavit for search warrant was insufficient and the warrant was void. he asserted the search was therefore illegal and in violation of his constitutional rights. In addition to this specific challenge, he offered controlling legal authority concerning the insufficiency of the affidavit. The Board overruled his objection and motion and affirmed the firing.

Turner had also concurrently filed a motion to suppress the foregoing evidence from use against him in the criminal case. He advanced the same challenge in support of exclusion that he did in his objection before the Personnel Board. The district court agreed with Turner, found the affidavit for search warrant insufficient, set aside the warrant, and ruled that the search and seizures were illegal. All testimony and evidence obtained from service of the search warrant was suppressed and excluded. The criminal charge was dismissed. This all occurred subsequent to the Personnel Board's hearing and decision.

Following the favorable disposition regarding the illegality of the search warrant in the criminal prosecution, Turner filed suit in the district court for review of the personnel Board's action. He sought reinstatement contending the only evidence upon which the Board based its decision was the product of an illegal search and seizure in violation of his constitutional rights. The City stipulated to nearly all the factual allegations of Turner's petition as well as the record of the Personnel Board hearing. City moved for judgment on the pleadings. After review of the record and the briefs of counsel, the district court granted judgment of reinstatement in favor of Turner, stating:

> The dispositive question is the propriety of discharging the Plaintiff on evidence secured under an invalid search warrant. The only authority for entering the private residence of the Plaintiff was the bogus warrant; therefore, the Court holds such evidence to be incompetent and the dismissal improper.

City now appeals.

I

The question presented in this case must be considered in light of the nature of the employment interest at stake. The question is

not what remedy is afforded a public employee in the event of adverse action by his superiors. This was addressed by the court in Umholtz v. City of Tulsa, 565 P.2d 15 (Okla. 1977). Here, the City of Lawton has already established an appeal to the Personnel Board as a remedy and relief from such action by its City Manager. This appeal procedure itself is a right, or benefit conferred upon an employee by the City.

It is also, however, a tribunal or forum for determination of issues in which the public is interested. The real issue centers on the substance of its procedure and actions. Of course, it cannot exceed the powers of its creating authority. Assuming this, it is clear that the City intended this grievance and appeal procedure to be independent, impartial, and meaningful, not only to protect the qualified from unjustified removal, but to exclude the unfit from public service.

The supreme court held in In re White, 355 P.2d 404, 406 (Okla. 1960), where a tribunal holds a hearing to determine whether a public employee should be discharged by a department

head, swears witnesses, hears oral testimony, receives stipulations made by the respective attorneys, passes on objections to admissibility testimony, admits exhibits in evidence, passes on offers of proof, hears argument of counsel for both parties, and submits written findings with a judgment, such a tribunal exercises a judicial function, and not merely an executive or administrative function. Whenever a personnel tribunal undertakes to adjudicate the fitness or unfitness of an individual for public employment it must do so upon consideration of matters that bear a relationship to the qualifications for a particular position, in accordance with constitutionally permissible standards, and through a proceeding which conforms to the minimum standards of due process.[1]

In general, the Supreme Court of Oklahoma in Wilhite v. Cruce, 70 Okla. 70, 72-73, 172 P. 962, 963-64 (1918), considered what protections are afforded by due process. The court noted that a definition applicable to all cases is difficult if not impossible to give. The court did observe generally that:

> "'Due process of law' in each particular case means such an exertion of the powers

> of government as the settled maxims of the law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs."
>
> . . . .
>
> By due process of law is meant the enforcement of right or prevention of wrong, before a legally constituted tribunal having jurisdiction over the class of cases to which the one in question belongs, with notice to the party upon whom the law exhausts itself, or upon whose property rights it operates, with an opportunity to appear and be heard in his own defense. (Emphasis added.) (Citation omitted.)

Due process adheres in any legal proceeding enforced by public authority whether newly devised or sanctioned by age and custom and which acts in furtherance of the general public good for preservation of liberty and justice.[2]

Clearly there are due process implications in the Board's consideration of evidence obtained in violation of the employee's constitutional right to be free from unlawful and unreasonable searches and seizures. In fact, the Board specifically took cognizance of the employee's claim to enforce his constitutional right and ruled on it. The Board has done more than simply pass on a rule of procedure, it has

made a decision on a question of law. It decided one the most fundamental legal issues in our jurisprudence: the scope of a constitutional protection.

In Union Indemnity Co. v. Sailing, 166 Okla. 133, 137, 26 P.2d 217, 221 (1933), the Oklahoma Supreme Court held "as a general rule . . . the provisions of our Constitution require that the decisions of administrative boards especially on questions of law be subject to judicial review." This court and the trial court were called upon to decide whether the adjudication of termination based on evidence obtained in violation of an employee's constitutional rights is consistent with the purpose of the Personnel Board and Oklahoma's constitutional protections and due process standards. I agree with the trial court that it was not.

II

The particular constitutional protection at issue is expressed in Okla. Const. art. 2, § 30:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches or seizures shall not be violated; and no warrant shall issue but upon probable

> cause supported by oath or affirmation, describing as particularly as may be the place to be searched and the person or thing to be seized. (Emphasis added.)

The threshold consideration is the nature of this right. That is, what is necessary to activate its protection for a citizen to claim and enforce its benefits. The question is whether it is self-executing. In re McNaught, 1 Okla. Crim. 528, 557, 99 P. 241, 254 (1909), sets forth the rule for analysis. Focus is upon the language used, the intrinsic nature of the provision (declaratory, directive, prohibitive), and whether it requires legislation to carry it into effect. particularly instructive is the following passage cited by the court in McNaught:

> If the nature and extent of the right conferred and of the liability imposed are fixed by the provision itself, so that they can be determined by the examination and construction of its own terms, and there is no language used that the subject is referred to the Legislature for action, then the provision should be construed as self-executing, and it is language addressed to the courts.[3]

The significance of the self-executing nature of a constitutional provision is

two-fold. The first is best stated by the McNaught court as:

> [W]here a Constitution asserts a certain right, or lays down a certain principle of law or procedure, it speaks for the entire people as their supreme law, and is full authority for all that is done in pursuance of its provision.

Id. at 559, 99 P.2d at 254. The second is that the extent of its enforcement is addressed to the courts.

A review of the authority of the Supreme Court of Oklahoma reveals that our highest court has given the broadest application to the protection of Okla. Const. art. 2, § 30. In Ashbrook v. State, 92 Okla. 287, 288, 219 P. 347, 349 (1923), the court referred to the protection of article 2, section 30, as "absolute security" against unlawful search and seizure and that its protection exists without reference to guilt or innocence of the person whose property is searched. The court further held illegally seized evidence could not be used in civil forfeiture proceedings. The Oklahoma Supreme Court has consistently applied the exclusionary aspect of this constitutional right.[4]

The Oklahoma Court of Criminal Appeals has similarly given the protection of article 2, section 30, "absolute" application in the cases and proceedings under its jurisdiction. However, due to our dual system for the administration of justice, holdings from the criminal law and criminal procedure context are only persuasive in the area of civil law and procedure. Nonetheless, they are due great deference and should be examined for guidance in the interests of uniformity. This is particularly true concerning an issue of such importance and magnitude as the scope of a constitutional right.

Our highest court for the administration of criminal justice has said evidence obtained in violation of constitutional rights and prohibitions should not only be excluded in criminal trials, but "should not be used at all";[5] that it is "incompetent evidence" and its exclusion is a "fundamental constitutional right."[6]

Also instructive and applicable is the rationale from Gore v. State, 24 Okla. Crim. 394, 218 P. 545 (1923). The court established

the exclusionary rule as a matter of state constitutional law in criminal proceedings. The court broke away from the old rule of prohibiting the trial court from trying "collateral matters" such as whether the evidence offered was obtained legally or illegally. This was as much a rule of permissiveness and expediency concerning "effective" law enforcement as it was a rule of procedure. The court classified this rule as one where "the ends justify the means," and rightfully condemned it. The court in Gore noted that such a rule, if appropriate at all, should be confined to such notorious activities as ward politics, shady business transactions, and private forms of oppressiveness. The court stated this rule was "not good law, nor even good morals." It also observed the practice was "not calculated to inspire . . . respect for courts and court procedure." that being fair adjudication. Id. at 401, 218 P. at 547. The court held it should not be applied where impartial enforcement of the law was concerned because the integrity of such action demands it

be carried out without condoning or encouraging violation of any laws.

The court in Gore also regarded the action of law enforcement officers acting with a defective search warrant due to an insufficient affidavit as being on the same footing as if they had acted without a warrant of any kind. The court characterized evidence obtained from such circumstances as a superstructure without a foundation and held such a search and seizure "illegal and 'unreasonable,' within the meaning of both the federal and the state Constitutions." Id. at 401, 218 P. at 547.

The special concurrence in Gore presents a compelling argument that the exclusionary protection of Okla. Const. art. 2, § 30, should be extended, recognized, and enforced in civil and quasi-judicial proceedings such as the Personnel Board:

> Constitutions should be liberally construed. A narrow and technical rule of construction should never be applied to any provision of the Constitution.
> . . .
>
> The right of the people to be "secure in their persons, houses, papers, and effects against unreasonable searches and seizures" as provided in section 30, art. 2, Constitution of Oklahoma, was clearly violated by the search made in this case.

That right is not "secure" if the government by its own officers, and through the agency of its courts, openly and defiantly violates such provision by an unlawful search, and then permits the fruits of that search to be used as weapons of condemnation and conviction through the same channels that committed the first wrong.

. . . .

Should the members of this court close their eyes to such a plain mandate against the invasion of personal liberty and domestic security? The answer is no.

. . . .

Section 30, art. 2, Constitution, is self-executing. In re McNaught, 1 Okl. Cr. 528, 99 Pac. 241. The protection guaranteed to the people by such self-executing provisions cannot obtain if the people's forums for the redress of their wrongs are to wholly ignore its plain inhibitions, and justify their conduct on grounds of necessity or expendency.

. . . .

The practice of so receiving such evidence necessarily results in widespread invasion of constitutional rights and makes of the Constitution a mockery and myth.

Id. at 412-14, 218 p. at 551 (Matson, P.J., specially concurring) (emphasis added) (citations omitted).

It would indeed be an incongruous rule that would prohibit the fruits of a constitutional violation from being used where the question is forfeiture of property as in Ashbrook, and not protect in the case of deprivation of one's livelihood. This is particularly true where the only justification of grounds in support of terminating public service are derived from unlawful and unconstitutional activity.

CONCLUSION

In this case the City sought to use the fruits of an illegal search and seizure of its police agents as weapons of condemnation. The employee sought enforcement of his absolute constitutional right under Okla. Const. art. 2, § 30, in order to prevent his wrongful discharge by the City. He did so before a legally constituted tribunal having jurisdiction over the class of cases to which the one in question belonged. It was a legal proceeding enforced by public authority, albeit newly devised, in furtherance of the general

public good. The protection guaranteed in this self-executing constitutional provision must obtain in this forum for the redress of a wrong as a matter of due process, since its plain inhibition is the supreme law established by the people. Necessity and expediency are not sufficient grounds to negate or even diminish such constitutional protection. It must also be applied to preserve public confidence in the integrity and impartiality of this particular adjudicatory process and judicial proceedings generally. Evidence obtained in violation of the constitutional right to be free from unreasonable search and seizure is a superstructure without a foundation. A determination of unfitness for public employment based upon such evidence does not rest on constitutionally permissible standards nor does it emerge from a proceeding which conforms to the minimum standards of due process.

This conclusion is clearly dictated by the facts of this case judged in light of the Oklahoma constitutional provision itself and well settled law <u>of this state</u>. It is not

necessary to look to federal authority[7] or the cases of other state courts.

The majority has concluded that the only purpose of the exclusionary rule is the deterrence of unlawful conduct of law enforcement officers. I cannot agree that this is the only purpose and such a conclusion is certainly not supported by Oklahoma case authority addressing the issue.

I do agree deterrence is one of the purposes and justifications, but it is not accomplished by hindsight analysis of the motives, "good faith," and other such subjective factors regarding the searching officers. Deterrence should operate as protection of individual privacy[8] and should operate prospectively. It should be a "bright line" clearly marking the limits of use and consequences of abuse of power and authority. It should also remove or discourage the temptation to resort to expediency when conventional and approved means are slow or unfruitful in yielding incriminating evidence.

I do not contend or even suggest that law enforcement officers are naturally oppressive,

abusive, or dishonest. They are on the whole, honorable, hardworking public servants. They sacrifice and take risks in the interests of the public welfare and safety.

It is this same dedication to duty, however, that turns zealousness into bias. A zealous officer with a permissive rule of law is just as dangerous as the untrained officer with a loaded gun. It is zeal that would tempt an officer to conduct a questionable search in "good faith," unconcerned that the fruits of the search are tainted for prosecution, because they would be admissible to forfeit a person's employment.

The result reached by the majority leaves such an avenue open to law enforcement officers and exposes the privacy of citizens to the threat and potential of such invasions. it does so with a feeble system of judicial oversight to review and correct such abuses.

Under the majority decision the question has been converted from "were constitutional prohibitions violated?" to "is there a good reason for ignoring the violation?" Those responsible for the fair administration of

justice cannot ignore, tolerate, or give effect to violations of constitutional rights to any degree. To do so is to ignore the plain constitutional protections and rewrite them. Article 2, section 30, does not say the right of the people to be secure in their persons and effects should not, ought not, or most of the time cannot, be violated by unlawful search and seizure by state government and its officials. It unequivocably says it shall not.

If it shall not be violated, violations shall not be given any efficacy. Only then is there "absolute security . . . without reference to guilt or innocence" which our supreme court has said this protection affords. According to the Oklahoma Court of Criminal Appeals, exclusion is not merely a judicially created rule of evidence or procedure, but rather "a fundamental right." I concur with this conclusion.

The trial court's review and relief in this case is in conformity with the rule set forth in White, concerning judicial review of determinations by such personnel tribunals. In

only and is limited to the transcript and the respective attorneys' argument. The court can also determine whether an error of law was committed at the hearing and whether the findings are supported by the evidence before the tribunal. Relief by the district court was characterized as follows:

> We have also held, if upon review, it appears that the decisions of the "tribunal, body or officer exercising judicial functions" are contrary to the law or contrary to the clear weight of the evidence, the district court may properly render such decision as should have been rendered.

White, 355 P.2d at 406 (citations omitted).

There being no error by the trial court, I would affirm.

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[1] Sharpe v. Oklahoma Bar Ass'n, 448 P.2d 301, 306 (Okla. Ct. Jud. 1968), Cert. denied, 394 U.S. 904 (1969).

[2] See In re McNaught, 1 Okla. Crim. 528, 537, 99 P. 241, 248 (1909), citing Hurtado v. California, 101 U.S. 516 (1884).

[3] In re McNaught, 1 Okla Crim. at 557, 99 P.2d at 253 (citation omitted). Attention is also directed to the succinct observation of Judge Cooley, one of the most renowned commentators on constitutional law, that "if complete in itself, it [a constitutional provision] executes itself." Id. at 559, 99

[4] Other cases in accord with the prohibition of using evidence obtained in violation of constitutional rights in civil forfeiture suits are One 1949 Pick-up Truck v. State, 206 Okla. 36, 240 P.2d 1107 (1952); State v. One 1940 Mercury, 203 Okla. 428, 223 P.2d 121 (1950); Dade v. State, 188 Okla. 677, 112 P.2d 1102 (1941).

[5] Simmons v. State, 277 P.2d 196, 198 (1954).

[6] Michand v. State, 505 P.2d 1399 (Okla. Crim. App. 1973).

[7] The Supreme Court of the United States in United States v. Leon, ___U.S.___, 104 S. Ct. 3430 (1984), has recently recognized a "good faith" exception to the exclusionary rule as a matter of United States constitutional law in cases where officers act under a warrant later declared void for insufficiency in the affidavit. This rule is neither controlling nor persuasive. Such a rule at this time is inconsistent with, if not repugnant to, the settled constitutional law of Oklahoma. It is in direct conflict with controlling state precedent of Gore v. State, 24 Okla. Crim. 394, 218 P. 545 (1923). Additionally, such a rule is nothing more than the "ends justifies the means rule" revitalized by judicial sophistry. In my view, there would be absolutely no benefit to the people of the state of Oklahoma in recognizing such a rule which would outweigh the coordinate dilution and diminution of their chosen, mandated constitutional protection.

The warning of Salter v. State, 2 Okla. Crim. 464, 478, 102 P. 719, 725 91909), overruled on other grounds, Ex parte Talley, 4 Okla. Crim. 436, 112 P. 41 (1910) (emphasis added) (citations omitted), states:

> We have a Constitution in which the utmost pains have been taken to preserve all the securities of individual liberty, and the courts cannot refuse obedience to its mandates. The Legislature cannot alter, annul, or avoid the constitutional safeguards of person and property set

forth in the Bill of Rights. They are beyond the reach of any legislative enactment. And the argument that defendant's failure to comply with a statutory provision of procedure is a waiver of his constitutional rights is fallacious. Expediency has no force as an argument in a court of justice. To countenance such a theory would be to strike a fatal blow to constitutional safeguards. The abuses and perversions of sound principles which would creep into the law by yielding to arguments like these -- what is supposed to be necessary for the public good -- cannot be better stated than it was by Justice Bradley in Boyd v. U.S., 116 U.S. 616 .... "It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to a gradual depreciation of the right, as if it consisted more in sound than substance. It is the duty of courts to be watchful for the constitutional rights of the citizens, and against any stealthy enroachments [sic] thereon. Their motto should be 'obsta principiis.'"

The court stated in Gore:

The insidious encroachments upon the liberty and private affairs of the individual by boards, commissions, examiners, detectives, inspectors, and other agents of the state and municipalities now prevail to such an extent that self-respecting citizens, in urban communities especially, do not know in the course of a day how many rules or regulations they have violated, for which

> they may be subject to a penalty. If one inadvertently expectorates in the street, or parks his car at the wrong angle, or places his garbage in the wrong kind of receptacle he may be guilty of an offense. If these governmental agencies, contrary to the letter and the spirit of our Constitution, are encouraged or condoned by the courts in their invasion of the privacy of homes, offices and places of business, forcibly and without invitation, for the purpose of procuring evidence to convict one of some misdemeanor, the practice followed to its logical conclusion will make our vaunted freedom, a mere pretense, valueless, and without substance. Whenever the courts actively encourage officers to procure evidence illegally by force, the officers soon become dictatorial, arrogant, and even brutal -- a natural consequence of the courts' approval of obtaining evidence illegally by force.

24 Okla. Crim. at 408, 218 P. at 549-50 (emphasis added).

APPENDIX C: Order of the Supreme Court of the State of Oklahoma, filed March 10, 1987

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Tuesday, March 10, 1987

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

61,399	Leonard Carl Turner v. City of Lawton, Oklahoma, a municipal corporation. Rehearing denied.
CONCUR:	Doolin, C.J., Hargrave, V.C.J., Lavender, Opala, Wilson, Kauger, JJ.
DISSENT:	Hodges, Simms, Summers, JJ.

* * *

/s/ John Doolin
CHIEF JUSTICE

APPENDIX D: **[Letter from William M. Roberts, District Judge, Fifth Judicial District, Comanche County, Oklahoma dated October 27, 1983.]**

October 27, 1983

Mr. Warren H. Crane
812 "D" Avenue
Lawton, Oklahoma 73501

Mr. Gerald S. Rakes
Assistant City Attorney
4th & "A" Avenue
Lawton, Oklahoma 73501

Re: Turner vs. City of Lawton, C-83-790

Gentlemen:

Please refer to Turner vs. City of Lawton, Case No. C-83-790.

The dispositive question is the propriety of discharging the Plaintiff on evidence secured under an invalid search warrant. The only authority for entering the private residence of the Plaintiff was the bogus warrant; therefore, the Court holds such evidence to be incompetent and the dismissal improper.

Sincerely,

William M. Roberts
District Judge

CERTIFICATE OF SERVICE

I, David M. Curtis, counsel for petitioner herein, City of Lawton, Oklahoma, a municipal corporation, hereby certify that, on this 30th day of April, 1987, I served two copies of the foregoing Petition for Writ of Certiorari on the party herein, as follows:

On Leonard Carl Turner, respondent herein, by depositing such copies in the United States Post Office, Lawton, Oklahoma, with first-class postage prepaid, properly addressed to the Post Office address of Warren H. Crane, the above-named respondent's counsel of record, 812 S.W. D Avenue, Lawton, Oklahoma 73501.

All parties required to be served have been served.

DAVID M. CURTIS
CITY ATTORNEY
CITY OF LAWTON, OKLAHOMA
103 S.W. 4th Street
Lawton, OK 73501
(405) 581-3320/3321